

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10630 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

KHUMANSINH PRABHATSINH PADHIAR

Versus

GUJARAT STATE ROAD TRANSPORT CORPO.

Appearance:

1. Special Civil Application No. 10630 of 2001
MR GK RATHOD for Petitioner No. 1
MR ASHISH M DAGLI for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 12/01/2004

ORAL JUDGEMENT

The present petition is preferred by the
petitioner for challenging the legality and validity of

the judgment and award, dated 13.3.2001 of the labour court passed in Ref.(LCV) No.1285/99.

2. Heard Mr.Songara for Mr.Rathod for the petitioner and Mr.Dagli for the respondeat.

3. The contention raised on behalf of the petitioner is that during the relevant period the petitioner was sick and medical certificate was also forwarded with the leave report. However, said aspect is not considered and, therefore, it has been submitted that the matter deserves interference. Mr.Songara also submitted that the absenteeism of the petitioner is not such a serious misconduct which would attract the termination and, therefore, he submitted that the punishment is disproportionate to the misconduct and the matter deserves consideration.

4. Having considered the above, it appears that in the departmental proceedings all throughout petitioner has not participated and not defended the proceedings at all. On the contrary, the notices which were issued to the petitioner have returned unserved as refused. Had the defence of the petitioner genuine that due to sickness he could not remain present on duty nothing prevented the petitioner from defending his case during the departmental proceedings. However, said defence is not at all taken even in the departmental proceedings. The aforesaid is coupled with the fact that the past record of the petitioner that he has remained absent number of times as a driver of the S.T.corporation. Therefore, in my view, the order passed by the labour court, since the punishment imposed is not disproportionate to the misconduct, does not call for interference in exercise of power under Article 227 of the Constitution of India.

5. Apart from the above, this court in the case of Gujarat State Road Transport Corporation vs Chimanlal R.Vaghri reported in 2002(3)GLR 29 has taken the view that the services of the drive in ST Corporation is one of essential services to the public at large and gravity of misconduct can not be diluted merely because the petitioner is a driver. It can not be ignored that a single day absence of the driver without prior permission would cause great inconvenience to the public at large. In view of the reasons recorded by this court in the aforesaid judgment in case of Chimanlal R.Vaghari(supra) I can not accept the contention of Mr.Songara that on the ground of absenteeism by driver of the ST corporation, his services can not be terminated.

6. In view of the above, no case is made out for interference. Hence, petition is dismissed. Rule is discharged.

12.1.2004 (JAYANT PATEL, J)